

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9532 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HINDUSTAN PENCIL LTD

Versus

K.B.PATEL

Appearance:

1. Criminal Misc.Application No. 9532 of 2001
MR ASHISH H SHAH for Petitioners No. 1-2
MR RAJESH K KANANI for Petitioners No. 1-2
NOTICE UNSERVED for Respondent No. 1
MR VIPUL PANCHOLI LD. APP for Respondent No. 2
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/02/2002

ORAL JUDGEMENT

Heard LD. counsel appearing for the applicants

and Ld. APP Mr. Pancholi for respondent no. 2-State.

Rule. Mr. Pancholi learned APP waives service of rule on behalf of respondent no. 2-State. By consent of learned counsel of both the parties, this matter is taken up for final hearing today.

Ld. counsel for petitioners has submitted that in view of the provisions of sub-section 2 of sec. 204 of Cr.P.C., the proceedings should be turned down as the complainant has not named any witness in the complaint. The petitioners are prosecuted by Govt. Labour Officer by a private complaint for the offence punishable under sec. 23 of Contract Labour (Regulations & Abolition) Act, 1970. Considering the contents of the application, the submissions made by the learned counsel is not accepted. The case against the petitioners is based on documents and the complainant himself is the only sufficient witness to prove the case of prosecution and such complaint should not be turned down on technicality of a procedural infirmity. There are contrary views qua the principle upon which the present petitioners intends to rely. Ld. APP has rightly placed reliance on the decision in the case of AP Jain Vs. CN Jotwani reported in 1976-77 Mah. Cr.R. (Bom.) 239, however, the ld. trial judge ought not to have issued process against the accused no. 2- Chairman & Managing Director of the company as he is stationed at Bombay. Undisputedly, he is aged above 80 years and the officers of the company and Executive Directors dealing with the affairs of the company stationed at Umargaon where the alleged offence is committed ought to have joined as Accused. So, the proceedings against accused no. 2 can be turned down and can be quashed. The prosecution against accused no. 1-company can still continue. The petitioner no. 1-company and petitioner no. 2 being Chairman & Managing Director both are hereby directed to give a name of the officer or Director who shall appear before the trial court and face the criminal proceedings. The summons served to accused no. 1 should be treated as summons served as per the provisions of section 305 of CrPC which obliges the company to appoint a representative for the purpose of inquiry or trial. The petitioner no. 1-company shall comply with the provisions of sub section 2 of section 305 of Cr.P.C. and the learned trial judge shall proceed with the prosecution on appointment of the representative of the company.

In the result, this application is partly

allowed. The Criminal Case No. 1040 of 99 pending in the court of the Ld. J.M.F.C., Umbergaon qua petitioner no. 2 is hereby quashed with above directions. If both the petitioners fail in complying with the above directions, it will be open for the complainant to join the petitioner no. 2 as accused irrespective of this quashing order passed in favour of petitioner no. 2. This application stands disposed of accordingly. Rule is made absolute to the aforesaid extent only. DS Permitted.

(C.K. BUCH, J.)
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